

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Enoch Sowah	Team: Squad #1	CCRB Case #: 201902036	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/07/2019 7:30 AM	Location of Incident: § 87(2)(b)	Precinct: 120	18 Mo. SOL 9/7/2020	EO SOL 4/24/2021	
Date/Time CV Reported Thu, 03/07/2019 10:17 AM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Thu, 03/07/2019 10:17 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Dominicci	06048	955888	120 PCT
2. SGT Paul Dieugenía	02713	946929	120 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Adam McNab	08987	959810	120 PCT
2. POM Dean Marco	10333	938934	120 PCT
3. POM Robert Martino	05441	958720	120 PCT
4. POM Vincent Giuliano	19020	958637	120 PCT
5. POM Frank Desiderato	13351	936473	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Dominicci	Abuse: Police Officer Robert Dominicci threatened to arrest § 87(2)(b)	§ 87(2)(b)
B.POM Robert Dominicci	Abuse: Police Officer Robert Dominicci entered § 87(2)(b) in Staten Island.	§ 87(2)(b)
C.SGT Paul Dieugenía	Abuse: Sergeant Paul Dieugenía entered § 87(2)(b) in Staten Island.	§ 87(2)(b)
D.POM Robert Dominicci	Abuse: Police Officer Robert Dominicci searched § 87(2)(b) in Staten Island.	§ 87(2)(b)
E.SGT Paul Dieugenía	Abuse: Sergeant Paul Dieugenía searched § 87(2)(b) in Staten Island.	§ 87(2)(b)
F.POM Robert Dominicci	Abuse: Police Officer Robert Dominicci failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)
G.SGT Paul Dieugenía	Abuse: Sergeant Paul Dieugenía failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On March 7, 2019, § 87(2)(b) filed this in-person complaint at the 120th Precinct on behalf of herself and her § 87(2)(b) son, § 87(2)(b). On March 7, 2019, the complaint was received at the CCRB.

On March 7, 2019, at approximately 7:30 a.m., in front of § 87(2)(b) in Staten Island, Police Officer Robert Dominicci of the 120th Precinct threatened to arrest § 87(2)(b) (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Dominicci together with Sergeant Paul Dieugenia and other officers from the 120th Precinct entered and searched the above location (**Allegations B through E: Abuse of Authority**, § 87(2)(g)). PO Dominicci and Sgt. Dieugenia failed to provide § 87(2)(b) with business cards (**Allegations F and G: Abuse of Authority**, § 87(2)(g)). § 87(4-b) § 87(2)(g)

No arrests or summonses resulted from this incident.

Police body-worn camera footage was received for this incident (Board Review 01-Board Review 05).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Robert Dominicci threatened to arrest

§ 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Robert Dominicci entered § 87(2)(b) **in Staten Island.**

Allegation (C) Abuse of Authority: Sergeant Paul Dieugenia entered § 87(2)(b) **in Staten Island.**

Allegation (D) Abuse of Authority: Police Officer Robert Dominicci searched § 87(2)(b) **in Staten Island**

Allegation (E) Abuse of Authority: Sergeant Paul Dieugenia searched § 87(2)(b) **in Staten Island.**

The following facts are undisputed. On March 7, 2019, at approximately 7:30 a.m., Sergeant Paul Dieugenia and Police Officers Robert Dominicci, Adam McNab, Dean Marco, Robert Martino, Vincent Giuliano, and Frank Desiderato, all from the 120th Precinct entered and searched § 87(2)(b) in Staten Island in search of § 87(2)(b). The officers possessed a bench warrant which stemmed from a § 87(2)(b) 2017, arrest. The warrant was issued on § 87(2)(b). The address listed on the arrest report and the warrant for § 87(2)(b) was § 87(2)(b) (Board Review 06, Board Review 15). PO Dominicci told § 87(2)(b) that he would be arrested if he failed to give the officers access to the house.

PO Dominicci's BWC (Board Review 01) begins with § 87(2)(b) opening the front door of the house, and standing in the doorway. At 07:32:03, PO Dominicci informs § 87(2)(b) that the officers have an arrest warrant for § 87(2)(b) and that the officers need to enter the premises and search for him. At 07:32:14, § 87(2)(b) asks to see the warrant. An officer, who is not depicted, appears to show § 87(2)(b) the warrant. The officer then asks § 87(2)(b) if § 87(2)(b) is in the house. § 87(2)(b) replies no. Sgt. Dieugenia, identified via investigation, tells § 87(2)(b) that the officers would be out of his way if he allows them to enter and search the premises for § 87(2)(b). At 07:32:43, § 87(2)(b) says the officers have a bench warrant and not an arrest warrant. PO Dominicci replies that a bench warrant is also an arrest warrant.

At 07:33:10, § 87(2)(b) tells the officers that he has no problem letting the officers inside the house, but that he is concerned that the appearance of multiple officers entering the premises might startle the other members of his family, including a mentally ill brother, who were inside the house. At 07:33:37, PO Desiderato, identified via investigation, asks § 87(2)(b) about his relation to § 87(2)(b). § 87(2)(b) replies that he somewhat knows § 87(2)(b) but that § 87(2)(b) was not a member of his family, and does not reside at the address. The officers ask § 87(2)(b) to move away from the door and lead them to § 87(2)(b) bedroom. § 87(2)(b) remains in the doorway and tells the officers that § 87(2)(b) is not in the house.

At 07:34:09, PO Dominicci appears to take a step towards the door, and tells § 87(2)(b) that he would be arrested for obstructing governmental administration (OGA) if he fails to move away from the door. § 87(2)(b) while remaining in the doorway, tells the officers that they have a bench warrant. At 07:34:17, PO Dominicci tells § 87(2)(b) that the officers are going to enter the premises and look for § 87(2)(b) and that § 87(2)(b) could be arrested for hindering the officers from entering and searching the premises for § 87(2)(b). At 07:34:28, § 87(2)(b) says to PO Dominicci, "Alright, no problem, you can do this right. I'mma let you in." PO Dominicci orders § 87(2)(b) to move away from the door. § 87(2)(b) remains in the doorway.

At 07:34:37, Sgt. Dieugenio asks § 87(2)(b) which room § 87(2)(b) is in. § 87(2)(b) in a raised voice, replies that § 87(2)(b) is not in the house. PO Dominicci tells § 87(2)(b) that the officers must enter the premises and check anyways. At 07:34:45, § 87(2)(b) still standing in the doorway, says to the officers, "It says bench warrant." PO Dominicci approaches § 87(2)(b) in the doorway, orders § 87(2)(b) to move back, and enters the house. The remaining officers also enter the house. The officers and § 87(2)(b) walk around and house and check all the rooms inside the house. The search yields negative results for § 87(2)(b).

§ 87(2)(b) (Board Review 07) and § 87(2)(b) (Board Review 08) acknowledged knowing § 87(2)(b) said he stayed with them for approximately two weeks approximately three years ago, and that he had not been to their house since. § 87(2)(b) said she confronted the officers and told them that they had illegally entered and searched her house because they did not have a search warrant. PO McNab and PO Dominicci told § 87(2)(b) that the officers did not need a search warrant because § 87(2)(b) gave them permission to enter and search for § 87(2)(b). § 87(2)(b) denied giving the officers consent to enter and search the premises, and said the officers instructed him to allow them in or that he would be arrested for OGA.

§ 87(2)(b) provided a copy of § 87(2)(b) New York State identification card, which she said she obtained from § 87(2)(b) after the incident, and which listed § 87(2)(b) address as § 87(2)(b) in Staten Island. The ID was issued to § 87(2)(b) on § 87(2)(b), over a year before the incident (Board Review 09).

Sgt. Dieugenio (Board Review 10) and PO Dominicci (Board Review 11) said they and the other five officers were enforcing active arrest and bench warrants for multiple individuals. Sgt. Dieugenio acknowledged being the supervisor of the team, but did not recall if database searches were conducted to determine § 87(2)(b) address, nor did he recall if the warrants investigation of § 87(2)(b) was assigned to a officer. PO Dominicci said several database searches were done for § 87(2)(b) but could not provide details of the types of searches or their outcomes. PO Dominicci and Sgt. Dieugenio, however, said that the address on the bench warrant coupled with Sgt. Dieugenio's familiarity with § 87(2)(b) provided enough grounds for them to believe that § 87(2)(b) resided at § 87(2)(b). Sgt. Dieugenio could not provide details regarding his familiarity with § 87(2)(b) except that he had seen § 87(2)(b) in the neighborhood, and that § 87(2)(b) had, in a prior arrest, provided his address as § 87(2)(b).

PO Dominicci and Sgt. Dieugenia said that they did not have any information that § 87(2)(b) was inside the house when they arrived on scene, but that their conversation with § 87(2)(b) aroused their suspicion that § 87(2)(b) was inside the house. § 87(2)(b) initially cooperated with the officers and said they could enter and search for § 87(2)(b) but he became evasive to the officers' additional questions, and refused to move away from the doorway when the officers attempted to enter. § 87(2)(b) was instructed multiple times to step away from the door, but he refused and appeared fixated on the fact that the officers had a bench warrant. § 87(2)(b)'s refusal to move away from the doorway coupled with sounds of movements that Sgt. Dieugenia heard from inside the house raised the officers' suspicion that § 87(2)(b) was inside the house and that § 87(2)(b) was potentially stalling to allow § 87(2)(b) escape. Sgt. Dieugenia could not describe the exact nature of the sounds he heard from inside the house.

PO Dominicci informed § 87(2)(b) that his refusal to move away from the door, after he had given the officers consent to enter the premises, was hindering their ability to search for § 87(2)(b) Mapp, and thus could result in § 87(2)(b)'s arrest for OGA. Sgt. Dieugenia said § 87(2)(b) could not have been arrested for OGA or any other offense.

PO Dominicci and Sgt. Dieugenia said that they entered and searched the premises both because § 87(2)(b) gave them permission to do so, and because § 87(2)(b)'s behavior led them to believe § 87(2)(b) was inside. Absent consent, § 87(2)(b)'s refusal to allow the officers' entry into the house coupled with the bench warrant gave the officers the requisite authority to enter and search the premises for § 87(2)(b). A consent to search form was not prepared for this incident, and PO Dominicci and Sgt. Dieugenia provided no explanation, except that the consent was documented in PO Dominicci and PO McNab's memo books (Board Review 12).

A request for the Warrants Investigative Data Sheet and DD5s involving § 87(2)(b) yielded negative results (Board Review 13). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) A search of § 87(2)(b) NYSID report and warrants profile, both NYPD databases, revealed that his last known address was § 87(2)(b), and that this address was listed in his five arrests that all occurred after his § 87(2)(b) 2017 arrest (Board Review 26 – Board Review 27).

A bench warrant must be executed in the same manner as an arrest warrant. New York Criminal Procedure Law § 530.70 (Board Review 16). An arrest warrant founded on probable cause carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe that the suspect is within. Payton v. New York, 445 U.S. 573 (1980) (Board Review 17). An officer may reasonably presume that the subject of an arrest warrant is present in their residence early in the morning, but this presumption does not apply if the police officer has no information placing the subject in that residence or location for weeks preceding the entry. United States v. Luckey, 701 F.Supp.2d 464 (SDNY 2009) (Board Review 18).

Absent consent or exigent circumstances, an officer cannot legally search for the subject of an arrest warrant in the home of a third party without a search warrant. Steagald v. United States, 451 U.S. 204 (1981) (Board Review 28). Submission to authority does not constitute consent. People v. Farquharson, 901 N.Y.S.2d 901 (2009 — Sup. Ct. Bronx County) (Board Review 19). Consent to search must be a free and unconstrained choice. Official coercion, even if deviously subtle, nullifies apparent consent. People v. Gonzalez, 39 N.Y.2d 122 (1976) (Board Review 20). According to NYC Administrative Code 14-173(a)(2), officers must obtain consent without threats or promises of any kind being made to the individual (Board Review 36).

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs, or prevent he administration of law or other governmental function or attempts to prevent a public servant from performing an official function. New York Penal Law § 195.05 (Board Review 21).

The video evidence shows that while § 87(2)(b) initially told the officers that he had no problems letting them inside the house, he remained in the doorway, said § 87(2)(b) was not in the house, and expressed his reservations about having all the officers enter the premises. The video shows that § 87(2)(b) only moved away from the door after PO Dominicci told him that he could be arrested for OGA if he failed to move from the doorway. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Robert Dominicci failed to provide § 87(2)(b) with a business card.

Allegation (G) Abuse of Authority: Sergeant Paul Dieugenia failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) (Board Review 29) and § 87(2)(b) (Board Review 30) said that none of the officers offered to give them their business cards, nor did they ask the officers for their business cards.

PO Dominicci (Board Review 31) did not recall having business cards at the time of this incident, but said he did not know that the nature of the incident required that he provide § 87(2)(b) with his business card.

Sgt. Dieugenia (Board Review 32) also did not recall having business cards at the time of this incident, though he said it was possible. He said his understanding of the Right To Know Law required that he provide his business card to civilians whose homes were searched, and that it was possible he did not give § 87(2)(b) his business card because he did not believe the

officers searched her home. Sgt. Dieugenia said that a home search involved opening and looking inside cabinets, wardrobes, and other areas within a premise in search for evidence and contraband, none of which the officers did while inside § 87(2)(b)'s home, and that walking around and checking the rooms inside § 87(2)(b)'s house did not constitute a search.

A protective sweep is defined as a quick and limited search of a premises. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding. Maryland v. Buie 494 U.S. 325 (1990) (Board Review 33).

Upon completion of a home search that does not result in a summons or arrests, officers must provide the subject of that search with a business card even if they do not request one, subject to certain exceptions. NYC Administrative Code 14-174(b)(3) (Board Review 34).

A business card is to be offered for a law enforcement activity, including a home search, except in cases when a summons is issued or an arrest is made. This procedure was effective as of October 19, 2018. Patrol Guide Procedure 203-09 (Board Review 35).

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§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- Sgt. Paul Dieugenia has been a member of service for 11 years and has been a subject in eight CCRB complaints and 15 allegations, none of which were substantiated, and § 87(2)(g) [REDACTED]
- PO Robert Dominicci has been a member-of-service for five years and has been a subject in six CCRB complaints and twelve allegations, eleven of which were not substantiated, and one of which is pending investigation. § 87(2)(g) [REDACTED]
[REDACTED].

Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] declined to mediate this complaint.
- As of November 6, 2019, the New York City Office of the Comptroller had no record of a Notice of Claim being filed in regards this to complaint (Board Review 24).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
[REDACTED]

Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date